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11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

13 In re

14 LAKE TAHOE DEVELOPMENT CO.,
15 LLC,

16 Debtor and Debtor in
17 Possession

Case No.: 2009-41579
DC No.: EKY-1

Chapter 11

Date: February 2, 2010
Time: 9:32 a.m.
Ctrm: 33, Dept. B

The Honorable Thomas Holman

18 MOTION TO EXTEND EXCLUSIVITY PERIODS; AND MEMORANDUM OF POINTS
19 AND AUTHORITIES IN SUPPORT
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1 **MOTION TO EXTEND EXCLUSIVITY PERIODS**

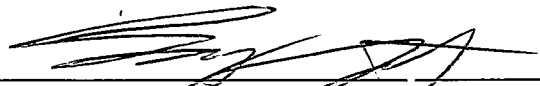
2 Lake Tahoe Development Co., LLC, a Nevada limited liability company, the
3 debtor and debtor-in-possession in this Chapter 11 case ("Debtor"), hereby files this
4 Motion ("Motion") for an Order extending the exclusive period within which the Debtor
5 may file a plan of reorganization under Section 1121(b) and the exclusive period to
6 solicit acceptances of a plan under Section 1121(c)(3) (collectively, "Exclusivity
7 Periods"), for approximately 150 days to and including July 2, 2010, and September 2,
8 2010, respectively. This is the Debtor's first request to extend the exclusivity periods.

9 As set forth below, cause exists for this extension pursuant to Bankruptcy Code
10 Section 1121(d) due to the complexity of the development and the ongoing efforts of the
11 Debtor to propose a feasible reorganization plan, which include: (i) obtaining an
12 extension of certain crucial development permits that expire in July of 2010; (ii)
13 continuing on-going negotiations with a potential investor/joint venture partner
14 concerning the Debtor's primary real property asset (the "Project"); (iii) continuing to
15 work with the City of South Lake Tahoe to obtain the benefits of certain municipal bond
16 financing; and (iv) negotiating with the creditors to attempt to forge a consensual plan of
17 reorganization. The Motion is based on the memorandum of points and authorities
18 attached hereto, the Declaration of Randy Lane filed concurrently herewith, the
19 pleadings and proceedings in this case, and on the oral arguments and facts that may
20 be presented to the Court at the hearing on the Motion

21 WHEREFORE, the Debtor requests an Order extending the Exclusivity Periods
22 for approximately 150 days to and including July 2, 2010, and September 2, 2010,
23 respectively, and for such other relief as is warranted under the circumstances.

24 DATED: January 27, 2010

LAW OFFICES OF EUGENE K. YAMAMOTO

25
26 By: 
27 Eugene K. Yamamoto, Attorneys for the
28 Debtor and Debtor-In-Possession, Lake Tahoe
Development Co., LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Lake Tahoe Development Co., LLC, a Nevada limited liability company, is the
4 debtor and debtor-in-possession in this Chapter 11 case ("Debtor"). The Debtor filed its
5 voluntary Chapter 11 petition for relief on October 5, 2009 ("Petition Date"). At present,
6 the exclusive period within which the Debtor may file a plan of reorganization under
7 Section 1121(b) expires on February 2, 2010, and the exclusive period to solicit
8 acceptances of a plan under Section 1121(c)(3) expires on April 2, 2010. The Debtor
9 hereby moves for an order extending (1) the exclusive period within which the Debtor
10 may file a plan of reorganization under Section 1121(b) for approximately 150 days to
11 and including July 2, 2010, and (2) the exclusive period to solicit acceptances of a plan
12 under Section 1121(c)(3) through and including September 2, 2010 (the "Motion"). This
13 is the Debtor's first request to extend the exclusivity periods.

14 The Debtor's largest asset is a \$250,000,000 large mixed use condominium,
15 hotel, convention center, and retail space construction and development project, located
16 at the California/Nevada state line on Highway 50, South Lake Tahoe, California (the
17 "Project"). As shown below, cause exists for this extension pursuant to Bankruptcy Code
18 Section 1121(d) due to the complexity of the development and the ongoing efforts of the
19 Debtor to propose a feasible reorganization plan, which include: (i) obtaining an
20 extension of certain development permits that expire in July of 2010; (ii) continuing on-
21 going negotiations with a potential investor/joint venture partner concerning the Project;
22 (iii) continuing to work with the City of South Lake Tahoe to obtain the benefits of certain
23 municipal bond financing; and (iv) negotiating with the creditors to attempt to forge a
24 consensual plan of reorganization.

25 Concurrently with this Motion, the Debtor is filing an application for Order
26 Shortening Time for hearing on the Motion, given the expiration of the exclusivity period
27 on February 2, 2010 and the potential investor/joint venture partner's concerns regarding
28

1 whether an order extending the exclusivity periods must be entered prior to its expiration.
2 In the event the Court declines to hear the Motion on shortened notice, the Debtor
3 requests that the Court enter a bridge order to extend exclusivity until the Motion can be
4 heard on regular notice.

5 **II. FACTUAL BACKGROUND**

6 **A. General Description Of The Debtor**

7 The Debtor commenced this voluntary Chapter 11 Case on October 5, 2009. The
8 Debtor is a real estate development company with substantial expertise in the real estate
9 land entitlement and permitting areas in the unique geographic location of South Lake
10 Tahoe, California. Its principal, Randy Lane ("Lane"), who is the sole owner of Mountain
11 Ventures, LLC, which is the managing member of the Debtor, has resided and
12 developed real estate in South Lake Tahoe since 1976, is well known in the South Lake
13 Tahoe Area and very well acquainted with the local government entities and officials in
14 South Lake Tahoe, including, without limitation, the Tahoe Regional Planning
15 Association ("TRPA"). Declaration Of Randy Lane In Support Of Motion To Extend
16 Exclusivity Periods ("Lane Dec."), ¶¶3,4.

17 The Debtor owns an interest in two separate real estate development projects.
18 The first project owned exclusively by the Debtor is a large, mixed use, condominium,
19 hotel and retail space development comprised of 29 separate real estate parcels with
20 multiple lien holders holding liens against various parcels located at the
21 California/Nevada state line on Highway 50, South Lake Tahoe, California (the "Project").
22 The second is property owned by the Debtor located at 1259 Emerald Bay Road, South
23 Lake Tahoe, CA (the "Gateway Project"), which is separate and apart from the Project,
24 and is being developed by Danny Freeman pursuant to a development agreement.
25 Lane Dec., ¶5.

1 **1. History of the Debtor¹**

2 The Debtor was formed in 2005 with one of its major purposes to acquire and
3 develop the Project. After acquiring certain existing rights from Marriot Hotels pursuant
4 to that certain Disposition and Development Agreement (“DDA”) between Marriot Hotels
5 and City, the Debtor began from various landowners the 29 parcels that now make up
6 the Project. These 29 parcels had an acquisition cost of approximately \$70,000,000, of
7 which there was debt financing of approximately \$26,000,000. During this land
8 acquisition period, the Debtor’s other main principal, John Serpa (“Serpa”), acquired an
9 interest in the Debtor ultimately contributing to the Debtor cash for acquisition and
10 construction costs, totaling in excess of \$69 million.

11 By acquiring and assembling the 29 parcels of real property and obtaining all
12 required entitlements to develop them as an integrated parcel (subject only to recording
13 a final parcel map), the Debtor significantly increased the value of the Project. This
14 increased value, however, can only be sustained by retaining all of the 29 separate
15 parcels, with entitlements, together, as part of the approved Project. A more detailed
16 history of the Debtor and the challenges related to the development of the Project are
17 set forth in pages 1 through 9 of the Preliminary Chapter 11 Status Report (“Report”)
18 attached as Exhibit “A” to the Lane Dec. Capitalized terms herein not otherwise defined
19 are as defined in the Lane Dec.

20 **2. Pre-Petition Events Leading to the Bankruptcy Filing**

21 By early 2009, after unsuccessful efforts to locate new capital, a joint venture or
22 debt financing for the Project, the existing secured debt started to mature. In January
23 2009, after discussions with creditors, the Debtor believed that the only source of capital
24 for a debt restructure could come from the sale of the Mello-Roos bonds by the City of
25 South Lake Tahoe, which could be sold and the proceeds utilized to reimburse the
26 Debtor for amounts it had already spent to acquire a portion of the land, and for utility

27 ¹ Evidence of this Section A 1 and A 2 are set forth in the Lane Dec., ¶111, and Exh. A
28 thereto.

1 relocation. These bonds were expressly authorized pursuant to the Owner Participation
2 Agreement ("OPA") between the Debtor and the City of South Lake Tahoe. However,
3 before they could be sold, the City Council needed to approve the sale of the bonds.
4 The bond sale would have provided the Debtor with approximately \$15,000,000. These
5 funds would have paid off one group of secured creditors, referred to as the "Z-Loan
6 Debt" of approximately \$12,500,000. The Z-Loan Debt had originally been put together
7 by a mortgage manager and consists of a group of approximately 44 individuals, and
8 their pension plans and trusts, who are separate beneficiaries under a Deed of Trust
9 against some, but not all, of the parcels that comprise the Project and which secures
10 their loan. The balance of the bond financing would have been divided among the
11 remaining secured creditors, to provide the Debtor with an additional two (2) years from
12 July 15, 2009, to develop the Project. Although this proposal was acceptable to most of
13 the secured creditors, a group of the Z-Loan beneficiaries were unwilling to compromise
14 on their debt.

15 Based upon the City Council's action in March 2009, which gave tentative
16 approval to the Debtors debt restructure plan, the Debtor went forward with preparing all
17 documents necessary for the sale of Mello-Roos Bonds. The Debtor worked diligently
18 with the City to conclude this transaction which involved numerous outside consultants
19 and attorneys. In June 2009, the Debtor went to the City Council for its final approval of
20 all documents and the sale of the bonds. The City Council, however, did not approve
21 the sale of the bonds and, as a result, the Debtor's restructuring efforts collapsed. Most
22 of the Debtor's unsecured debt is comprised of professionals who were engaged to
23 prepare documents required for the sale of the bonds.

24 During the period from March to June of 2009, the secured creditors began
25 recording Notices of Default, and as a result, on October 5, 2009, the Debtor filed its
26 Chapter 11 bankruptcy petition.

1 The value of the Project is based upon retaining the 29 separate parcels that are
2 entitled as one integrated project. This Project includes consolidating the 29 separate
3 parcels of land pursuant to the approved but not yet recorded "final map," a valid TRPA
4 development permit (which includes the necessary development resources) and an
5 agreement with the City of South Lake Tahoe to sell municipal bonds.

6 The Debtor has the potential ability to keep the TRPA permit and the City's bond
7 agreement intact. However, to record the "final map" the Debtor needs the approval of
8 all secured creditors. Based upon the complexity of the debt structure, which includes
9 approximately 44 individual pension plans and trusts from the Z Loan Debt, and the lack
10 of collective creditor representation, it is difficult, if not impossible, to obtain this
11 unanimous consent required to maintain the value of the Project without the assistance
12 of a reorganization plan.

13 **B. Post-Petition Efforts To Develop The Project And A Plan Of Reorganization**

14 The Debtor's members, having invested \$90,000,000 of their own equity funds in
15 the Project, have a strong desire and commitment to make this Project succeed. As a
16 result of the \$25,000,000 in excavation and foundation work completed at the Project
17 prior to the Debtor shutting down construction, the 29 parcels are *de facto* joined
18 together through foundation work and support structures that were constructed over
19 existing boundaries of the currently existing 29 parcels throughout the Project. Lane
20 Dec., ¶ 6.

21 The Debtor intends to reorganize and preserve its investment in the Project. This
22 case currently involves approximately 59 separate secured creditors, with divergent
23 views and interests holding Deeds of Trust on various, not necessarily contiguous,
24 parcels. The TRPA Construction Permits ("TRPA Permits) will expire in July of 2010,
25 unless extended. Lane Dec., ¶ 7.

26 In ordinary economic times, this Project is challenging in its complexity. In the
27 difficult economic climate we are currently experiencing, where banks and institutional
28

1 lenders are not making new construction loans on large projects, this project is even
2 more challenging. Lane Dec., ¶ 8.

3 In April of 2009, the City of South Lake Tahoe engaged an MAI appraiser at
4 Johnson & Perkins, who valued the Project in April of 2009, at \$105,000,000. It must be
5 emphasized that the value of this Project is based upon all 29 parcels being
6 consolidated, as approved in the final parcel map, and all entitlements and permits
7 remaining active. Developed as an integrated parcel and maintain all of the entitlements
8 and permits in place to do so. Lane Dec., ¶ 9. The Debtor is uniquely positioned to
9 preserve and enhance the value of the Project because of its unique knowledge,
10 expertise, familiarity and local relationships with all development agencies within the
11 Lake Tahoe Basin. In addition, the Debtor has invested substantial amounts in the
12 Project and wants an opportunity to reorganize. Lane Dec., ¶ 10.

13 In attempting to formulate a Chapter 11 Plan here, the following critical issues
14 must first be addressed. Lane Dec., ¶ 12.

15 **1. Extension of TRPA Permits.**

16 The Tahoe Regional Planning Authority is a bi-state (California and Nevada)
17 authority with the charter to preserve, restore, and enhance the unique natural and
18 human environment of Lake Tahoe, which oversees and regulates development at Lake
19 Tahoe. The TRPA Permits for the Project are scheduled to expire in July, 2010, unless
20 extended. The Debtor spent two and a half years and \$8,000,000 in its efforts to modify
21 and renew the original permits which had been obtained prior to the Debtor's acquisition
22 of the real property comprising the Project. The Debtor was able to use the existing
23 Environmental Impact Report and Environmental Impact Statement previously approved,
24 otherwise the time and expense would have been greater. The Debtor will seek to
25 extend the TRPA Permits an additional three (3) years. The extension of the TRPA
26 Permits is critical to the development of the Project. If the TRPA Permits expire, it would
27 likely take three (3) to four (4) years, thousands of man hours and several million dollars
28

1 in costs to seek new TRPA Permits. Even so, obtaining new TRPA permits is a very
2 uncertain undertaking. During the process, rules can be added or changed, adding to
3 the difficulties and uncertainties. Environmental and construction experts must be
4 retained to evaluate and prepare new environmental impact reports, public circulations
5 and hearings regarding these documents and notices to all affected property owners
6 would be required to obtain new TRPA Permits. Lane Dec., ¶ 12a.

7 The process to extend the TRPA Permits is costly and time consuming, but
8 relatively minor in comparison to obtaining new permits. Along these lines, the Debtor is
9 in the process of completing the TRPA applications to make minor modifications to the
10 Project which will not impact previously obtained environmental or discretionary permits
11 from any agency. The Debtor is working with the original architect, Randy Brown from
12 the MBA firm in Reno, Nevada and their staff, and Michael Russell of PD&A in Southern
13 California, the design consultant, to prepare the necessary collateral material to submit
14 with the TRPA extension application. This process involves interior modifications to
15 address current and projected market conditions and make the Project more attractive to
16 potential investors/buyers. There are numerous steps involved in this process, and it will
17 take the Debtor an estimated 4 or 5 months to complete. Extension of the TRPA Permits
18 inures to the benefit of all creditors since it preserves the value of the Project. Lane
19 Dec., ¶ 12a.

20 **2. Updating the Owner Participation Agreement.**

21 The Debtor is continuing to work with the City of South Lake Tahoe ("City")
22 regarding updating and re-evaluating the Development Agreement with the City set forth
23 in the Owner Participation Agreement ("OPA"). The OPA contains various negotiated
24 concessions and benefits (including financial benefits and incentives) between the City
25 and the Debtor; it also contains timelines which must be adjusted and renegotiated due
26 to the present situation of the Project. The OPA remains in effect, however, it must be
27 updated to reflect the current project status and market conditions. This necessitates a
28

1 re-evaluation of various requirements which need to be addressed in order for the
2 Project to maintain its value and receive the maximum financial benefits from the OPA,
3 including, without limitation:

- 4 • Municipal Bond Sale Program (re-evaluating bond financing program
5 which may provide additional financial benefits for the Project.)
- 6 • Convention Center size – (re-evaluate the cost, size and design of the
7 center)
- 8 • Overhead pedestrian separation (re-evaluating the need, design and
9 utility of the overhead walkway)
- 10 • Transfer of development resources from the City pool (confirming the
11 Commercial Floor Area (“CFA”) allocation to the Project)

12 Lane Dec., ¶ 12b.

13 **3. Recording of Final Parcel Map.**

14 The Debtor has expended significant efforts to obtain the City’s approval of a final
15 parcel map. The Project is currently being developed without recordation of the final
16 map. The Debtor understands that all secured creditors must acknowledge the final map
17 prior to its recordation. Notwithstanding that recordation of a final map is a critical part of
18 the entitlement package, which allows the Project to be completed, facilitates a possible
19 sale of the Project, some secured creditors have expressed resistance to a final map
20 recordation based upon their beliefs that their security would be compromised. The
21 Debtor has met with various secured creditors to attempt to build consensus with regard
22 to recording a final map. Working with creditors is a key element in recording the final
23 parcel map which is essential to the value of the entitled Project. Currently it appears
24 that the only way to obtain the requisite creditor approval may be through a
25 reorganization plan. When recorded this map will allow the following:

- 26 • Consolidation of the 29 parcels into 5 parcels.
- 27 • Transfer of all City streets within the development area to the Debtor.
- 28 • The future sale and transfer of three parcels of land to the City;
(1) perimeter circulation parcel which includes sidewalks, and
streetscape; (2) Open space parcel required by TRPA permit; (3) Air
space parcel to allow City ownership of convention facility with 99 year
leaseback to debtor. The value of these parcels on April 1, 2009, was
estimated by Johnson & Perkins appraisers at \$23,100,000, which

1 would be paid to the Debtor (developer) upon sale of the non-
2 reimbursable Mello-Roos Bonds.
3 Lane Dec., ¶ 12c.

4 **4. Resolving Issues with Caltrans.**

5 Issues with Caltrans that need to be addressed include: (i) certain encroachment
6 permit issues along U.S. Highway 50; and (ii) the prolonged closure of pedestrian access
7 along West side of U.S. Highway 50. Lane Dec., ¶ 12d.

8 **5. Addressing Utility Disputes.**

9 The Debtor has been working with the Utility Companies to resolve disputes over
10 the costs associated with relocation of utilities included in South Tahoe Public Utility
11 District (STPUD) and Lakeside Water Company, which could result in an offset of fees or
12 reimbursement of a portion of the costs to the Debtor. Lane Dec., ¶ 12e.

13 **6. Potential Sale of the Project or New Capital Investment.**

14 One Plan alternative involves a potential sale of the Project as a means toward
15 satisfying the Debtor's obligation to creditors. The Debtor has met with certain of the
16 secured creditors in connection with pursuing the possible marketing of the Project by
17 outside real estate brokers or intermediaries. Lane Dec., ¶ 12f. The difficulties in a sale
18 of the Project involve not only the availability of qualified purchasers, but the amount of
19 time and resources required to educate a perspective purchaser as to the complexities,
20 unique entitlements and construction process (and limitations) associated with
21 development in the South Lake Tahoe area. As a result of these difficulties, the Debtor
22 has expended substantial amounts of time, energy and money in pursuing a sale or joint
23 venture of the Project in the past several months. Lane Dec. ¶ 13.

24 In connection with the foregoing, the Debtor is currently involved in serious
25 discussions with a potential investor. Lane Dec. ¶ 14. The investor has requested that
26 the Debtor's principals keep the identity of the potential investor confidential, at least
27 until the parties are able to formulate a binding agreement. Id. The Debtor is concerned
28 that a breach this confidentiality will jeopardize the consummation of an agreement. Id.

1 Negotiating an agreement for the sale of the Project is quite involved and complex. Id.
2 Any investment in the Project requires a substantial amount of interaction so that the
3 investor understands the Project and the complex issues involved in the development
4 and construction of the Project. There have been several months of negotiations with
5 this potential investor and the investor has become familiar with the Project. Id. The
6 Debtor believes that this potential investor has the financial wherewithal and experience
7 to complete the Project in the event an agreement is reached. Id.

8 **D. Request to Extend Exclusivity.**

9 At present, the exclusive period within which the Debtor may file a plan of
10 reorganization under Section 1121(b) expires on February 2, 2010, and the exclusive
11 period to solicit acceptances of a plan under Section 1121(c)(3) expires on April 2, 2010.
12 The Debtor hereby requests an extension of (1) the exclusive period within which the
13 Debtor may file a plan of reorganization under Section 1121(b) for approximately 150
14 days to and including July 2, 2010, and (2) the exclusive period to solicit acceptances of
15 a plan under Section 1121(c)(3) through and including September 2, 2010. As set forth
16 above, the Debtor has made substantial progress thus far in its Chapter 11 case, and
17 based thereon requests an extension of approximately 150 days of the exclusivity
18 periods in order to: (i) allow Debtor to obtain an extension of the TRPA Permits, (ii)
19 update the OPA, (iii) continue to work toward recordation of a final parcel map, (iv)
20 working with Caltrans to resolve encroachment issues and closure of pedestrian access,
21 and (v) continue working on the possible sale of the Property.

22 The Debtor requires more time to address the issues set forth above concerning
23 the Project, formulation of a plan and possible sale of the Project. It is likely that
24 resolution of these issues may require a longer period of time, however, it makes sense
25 to the Debtor at this juncture, to request a 5 month extension of the exclusivity periods
26 since, during this time, the Debtor should be able to obtain the extension of the TRPA
27 Permits and hopefully finalize an agreement with the potential investor. Lane Dec., ¶15.

1 This relief is warranted under the circumstances, particularly given the Debtor's
2 substantial progress to date, and will enable the Debtor to formulate and confirm a plan
3 of reorganization under the protection of the exclusivity provisions of Section 1121.

4 **III. LEGAL ANALYSIS**

5 **A. The Exclusivity Periods**

6 The Order for relief was entered when the Debtor commenced this Bankruptcy
7 Case on October 5, 2009. The "Exclusivity Periods" which are the focus of this motion
8 are set forth in Bankruptcy Code Section 1121(b) and (c). Under Section 1121(b), only
9 the Debtor can file a reorganization plan during the first 120 days after the entry of the
10 Order for relief. Under Section 1121(c), the Debtor retains the exclusive right to file a
11 plan for 180 days after entry of the Order For Relief, provided that the Debtor filed a plan
12 within the 120 day period set forth in 1121(b), no trustee has been appointed and the
13 plan filed by the Debtor has been accepted within the 180 day period. 11 U.S.C.
14 §1121(b) and (c). The Exclusivity Periods currently expire on February 2, 2010 and
15 March 4, 2010, respectively.

16 **B. The Court Has Authority To Extend The Debtor's Exclusivity Periods For** 17 **Filing A Plan And Soliciting Acceptances Thereof.**

18 Bankruptcy Code Section 1121(d)(1) provides that this court may for "cause"
19 extend the 120 day and 180 day Exclusivity Periods "on request of a party in interest
20 made within the respective periods specified in subsections (b) and (c) of this section
21 [§1121] and after notice and a hearing." 11 U.S.C. §1121(d)(1).

22 The Debtor is a party in interest and requests an approximate 150 day extension
23 of the Exclusivity Periods of Bankruptcy Code Section 1121(b) and (c) in order that it can
24 continue its efforts with development of the Project in order to propose a feasible
25 Chapter 11 plan of reorganization, including, without limitation: (i) extending the TRPA
26 permits, which requires reworking of the Project design; (ii) obtain a re-evaluation of the
27 OPA with the City of South Lake Tahoe which is dependent upon extending the TRPA
28

1 and the ultimate plan for building out the Project; (iii) continuing its negotiations with the
2 potential investor with regard to the purchase of or investment in the Project; (iv)
3 commencing discussions with CalTrans and the Utility Companies; and then, (v)
4 discussing project developments with the secured creditors in the hopes of obtaining
5 creditor approval of the recordation of a final map.

6 Since "cause" for the extension of exclusivity periods is not defined, it is left to be
7 developed by case law. When determining the existence of "cause" Courts should keep
8 in mind the principal Congressional goal of Chapter 11 as articulated by the U.S.
9 Supreme Court, "the successful rehabilitation of the debtor or its business." *NLRB v.*
10 *Bildisco, et al.*, 465 U.S. 513, 527 (1984); *United States v. Whiting Pools, Inc.*, 452 U.S.
11 198, 203 (1983); *See also* House Report at 220. By providing the initial "Exclusivity
12 Periods" and the authority to extend these periods to a maximum limit in Bankruptcy
13 Code Section 1121(d), Congress left the length of the Exclusivity Periods largely within
14 the discretion of the Bankruptcy Court. To achieve the primary goal of a successful
15 rehabilitation of the debtor, the term "cause" is to be viewed flexibly in order to allow the
16 debtor to reach an agreement." *In re McLean Industries*, 87 B.R. 830, 844 (Bankr.
17 S.D.N.Y. 1987); *In re Perkins*, 71 B.R. 294, 297 (W.D. Tenn. 1987). In determining
18 whether cause exists to extend the Exclusivity Periods, courts traditionally consider the
19 factors regarding the size and complexity of the case. *Matter of All Seasons Industries*,
20 121 B.R. 1002, 1005-1006 (Bankr. N.D. Ind. 1990); *In Re AMKO Plastics, Inc.*, 197 B.R.
21 74, 75-76 (S.D. Ohio 1996).

22 Indeed it is the very goal of the Chapter 11 Process, rehabilitation to preserve and
23 generate going concern value to increase the pool of assets available for distribution to
24 creditors, which is at play here since the value of the Project, and the ultimate return to
25 creditors, increases if this entire Project is kept intact through the reorganization process
26 (i.e. if any of the assembled 29 parcels is removed, the building permits and the ability to
27 record the final map are lost and the value of the Project then drops significantly).

1 A list of some of the factors that various courts, including the Ninth Circuit
2 Bankruptcy Appellate Panel, have considered in determining whether there is "cause" to
3 extend the Exclusivity Periods, include:

- 4 (1) The size and complexity of the case;
- 5 (2) The number of previous extensions;
- 6 (3) The amount of time which has elapsed in the case relative to its size and
7 complexity;
- 8 (4) The existence of good faith progress;
- 9 (5) Whether the debtor is paying its bills as they become due;
- 10 (6) Whether the debtor has demonstrated reasonable prospects of filing a viable
11 plan;
- 12 (7) Whether the debtor has made progress in negotiating with its creditors;
- 13 (8) Whether the debtor has deprived creditors of material or relevant information;
14 and
- 15 (9) Whether the debtor is seeking an extension to pressure creditors.

16 *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997) and *In re*
17 *Express One Int'l*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); See, *In re Henry Mayo*
18 *Newhall Memorial Hospital*, 282 B.R. 444, 452 (9th Cir. B.A.P. 2002).

19 **C. Good Cause Exists To Grant The Debtor's Request For Extensions Of The**
20 **Plan Exclusivity Periods.**

21 In this case, good cause exists to grant the Motion. Although the Debtor has
22 made very significant progress thus far in its Chapter 11 case, the Debtor needs an
23 additional period of time to continue to work towards development and/or sale of the
24 Project. Specifically, this case currently involves approximately 59 separate secured
25 creditors, with divergent views and interests, holding Deeds of Trust on various, not
26 necessarily contiguous, parcels, where the construction permits will expire in July of
27 2010, unless extended. In ordinary economic times, such a Project is challenging in its
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1 complexity. In ordinary economic times, this Project is challenging in its complexity. In
2 the difficult economic climate we are currently experiencing, where banks and
3 institutional lenders are not making new construction loans on large projects, this project
4 is even more challenging.

5 The Debtor anticipates that it will ultimately file a plan of reorganization that will
6 allow the Debtor to record a final map, which will enhance the value of the Property and
7 make it more financeable and/or saleable. Before the Plan can be proposed, the Debtor
8 will need to obtain an extension of the building and TRPA permits. The current building
9 permits expire in July of 2010. By pursuing a redesign of the hotel/condominium units,
10 as part of the process to obtain an extension of the TRPA permits, the Debtor will
11 address current market demands (which appear to call for smaller units than those
12 originally contemplated) and reducing the initial construction costs by constructing the
13 Project in phases. Through this redesign, the Debtor will likely be able to extend the
14 existing TRPA permits by three years which will inure to the benefit of all creditors.

15 In applying the factors courts in the Ninth Circuit review to determine requests to
16 extend exclusivity to the instant case, these factors weigh heavily in favor of extending
17 the exclusive periods.

18 First, there is no question that this is a large complicated case. The Debtor's
19 main asset, the Project, is a \$250,000,000 development/construction project consisting
20 of 29 separate parcels of real property, with a recent appraisal value of \$105,000,000.
21 There are 59 secured creditors, with an aggregate outstanding principal amount of more
22 than \$50,000,000. The Debtor's equity holders have invested more than \$90,000,000 in
23 the Project and more than \$25,000,000 of excavation and foundation work has been
24 completed. Given the current status of construction, final build out of the Project will
25 require: (i) TRPA Permit extensions, (ii) reworking the OPA with the City of South Lake
26 Tahoe, (iii) negotiations and resolution with CalTrans and the Utility Companies, and (iv)
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1 agreement of all of the secured creditors (either through consent or under a Plan) to
2 record a final map.

3 Second, the Motion represents the Debtor's first and only request to extend the
4 Exclusivity Periods.

5 Third, the amount of time that has elapsed relative to the size and complexity of
6 this case is also met. Approximately 3 months have passed from the commencement of
7 the Debtor's case.

8 Fourth, the existence of good faith progress is met. The Debtor is proceeding in
9 good faith. The Debtor has met with its secured creditors for lengthy discussions both at
10 the meeting of creditors and a separate meeting prior to the Preliminary Status
11 Conference – as well as had other separate discussions with individual creditors. The
12 Debtor has also met with architects and design consultants with regard to its goal of
13 extending the TRPA Permits. Additionally, the Debtor has met with the City of South
14 Lake Tahoe with regard to the OPA and various City issues. Finally, the Debtor has
15 been in lengthy negotiations with a potential investor who has the wherewithal to
16 complete the Project with the Debtor's assistance.

17 Fifth, the Debtor is paying its bills as they become due.

18 Sixth, although there are many steps and issues that must be addressed for the
19 Debtor to be in position to propose its plan, the Debtor is heavily involved with
20 negotiations with an investor who has the ability to complete the Project with the
21 Debtor's assistance, and moreover has shown significant progress in efforts to develop
22 the Project.

23 Seventh, as to whether the Debtor has made progress in negotiating with its
24 creditors, the Debtor meeting with its creditors toward trying to reach a resolution.
25 Although some of its secured creditors push for the immediate liquidation or sale of the
26 Project, these creditors believe that since they hold first position liens they will get paid in
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1 full, and the Debtor is also attempting to consensually address claims of the junior
2 secured creditors and unsecured creditors.

3 Eighth, the Debtor has not deprived creditors of material or relevant information.

4 Ninth, the Debtor is not seeking an extension to pressure creditors, but rather to
5 keep pursuing things such as an extension of the TRPA Permits and revision of the OPA
6 that will inure to the benefit of the creditors.

7 In short, the Debtor meets the factors which the Courts have traditionally applied
8 to determine cause for extending the Exclusivity Periods and the Debtor's motion should
9 be granted.

10 **D. The Debtor's Request For An Extension Of The Exclusivity Periods Is In**
11 **Good Faith, And Not For The Purpose Of Pressuring Creditors To Accede**
12 **To The Debtor's Demands.**

13 Courts have found cause to justify an extension of the debtor's exclusivity periods
14 where there is no evidence that an extension is being sought for purposes of pressuring
15 creditors into acceding to a debtor's reorganization demands. *See In re Pine Run Trust,*
16 *Inc.*, 67 B.R. 432 (Bankr. E.D. Pa. 1986). The Debtor's request herein is being made in
17 good faith and not for the purpose of pressuring creditors into acceding to certain plan
18 terms. On the contrary, the Debtor intends to confirm a plan that provides for a
19 distribution to creditors within a reasonable time period. The Debtor is not aware of any
20 creditor whose claim would be adversely affected or impaired by the granting of the relief
21 requested herein. The Debtor hopes to formulate a plan that will be supported by all
22 creditors. Further, this is the Debtor's first request to extend exclusivity.

23 **E. The Debtor Has Properly Administered its Chapter 11 Case.**

24 Courts have recognized that the diligence of management and proper
25 administration of the case are yet additional factors supporting an extension of the
26 exclusivity periods. *See, In re United Press International*, 60 B.R. 265 (Bankr. D.D.C.
27 1986); *In re Trainer's, Inc.*, 17 B.R. 246, 247 (Bankr. E.D. Pa. 1982).


1 In the present case, the Debtor has properly administered its Chapter 11 case in
2 that it has complied timely and properly with all of the requirements of the Bankruptcy
3 Code, the Federal Rules of Bankruptcy Procedure, and is current with respect to all
4 payments to, and all reporting requirements of, the Office of the United States Trustee.
5 Under these circumstances, the Court may extend the exclusivity periods for filing and
6 obtaining confirmation of a plan of reorganization with the confidence that the Debtor are
7 in full compliance with the requirements that are a condition to the Debtor maintaining its
8 exclusive rights to file plans and solicit acceptance thereof in its bankruptcy case.

9 **IV. CONCLUSION**

10 Based on the foregoing, the Debtor respectfully requests that this Court enter an
11 order granting the relief requested herein and such other and further relief as may be
12 just and appropriate under the circumstances of the Debtor's case.

13
14 DATED: January 27, 2010

LAW OFFICES OF EUGENE K. YAMAMOTO

15
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19 Development Co., LLC
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